

Amendment No. 1 to HB1743

**Fitzhugh
Signature of Sponsor**

AMEND Senate Bill No. 1508*

House Bill No. 1743

by deleting all language after the caption and by substituting instead the following:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 65-21-105, is amended by designating the existing language as subsection (a) and by adding the following language to be designated as follows:

(b) As used in this section:

(1) "Attaching party" means the pole user or party entering into a pole attachment agreement with a utility;

(2) "Pole owner" means a utility; and

(3) "Utility" means a municipally owned utility operated pursuant to § 7-52-103, or any other public or private act, or a rural cooperatively owned utility doing business pursuant to the authority of title 65, chapter 25, or title 48, chapter 53.

(c) The following best practice standards shall apply to pole attachment contract negotiations:

(1) The utility that owns the pole shall provide sufficient time for meaningful negotiations between the parties. Such contract negotiations shall involve discussions among both parties, and allow for at least a ninety-day negotiating period for any substantial contract changes.

(2) Pole owners shall give appropriate consideration to any adverse impacts on broadband deployment and to providing additional predictability in future pole attachment rates. If a pole user demonstrates that rate increases

will have a material adverse impact on broadband deployment, the parties shall explore mechanisms to mitigate that impact; and

(3) The parties shall explore whether future rate increases can be coordinated with the attaching party's fiscal year end, to mitigate mid-year budget impacts, and further explore the length of contracts generally entered into to determine whether longer contracts could be developed to provide more predictability for future rate changes.

(d)

(1) The board of a utility is authorized to hear and resolve disputes over the rate and other pole attachment contract decisions of the utility. The party requesting to enter into a pole attachment contract with a utility or to modify a pole attachment contract may file a petition with the board for a hearing and decision in the following situations:

(A) A utility requests a pole attachment rate in excess of the utility's then prevailing rates for telephone attachments for the telephone company utilizing the greatest number of poles within the utility's service area;

(B) A pole user demonstrates that the requested pole attachment rate will either prevent the pole user from upgrading its facilities to provide ultra-high speed broadband services or will require the pole user to terminate service to a substantial number of current customers; or

(C) The parties have not successfully concluded contract negotiations on non-rate issues within one hundred (180) days from the date the contract negotiations on such issues began.

(2) The board may act as a mediator or arbitrator, conduct its proceedings and issue its findings within sixty (60) days of the filing of the petition.

(3) Any party aggrieved by the findings of the board may petition the Tennessee Regulatory Authority for relief on the basis that the board's decision is arbitrary, capricious, or without justification, in whole or in part.

(e)

(1) There is hereby created a statewide operational working group to be comprised of representatives from all segments of pole owners and pole users. The speakers of the house of representatives and the senate, in coordination with the Tennessee Municipal League, the Utility Management Review Board and the Comptroller of the Treasury shall determine the number of representatives to be appointed to the working group and further determine from which utilities and pole users the representatives shall be selected to serve on the working group. Subject to subdivision (3), such representatives shall be jointly appointed by the speakers annually. Representatives may be reappointed to serve on the working group. Representatives serving on the working group shall receive no state reimbursement for attending meetings of the group.

(2) The working group shall meet periodically to address operational issues on a coordinated basis and to develop operational "best practices" that would be advisory recommendations to the utilities. The areas for initial discussion shall include, but not be limited to, the following areas:

(A) Mechanisms to coordinate pole permitting, joint pole inventories and joint pole inspections among all attaching parties;

(B) Mechanisms to implement corrections of code and safety violations;

(C) Mechanisms to coordinate make-ready and transfer work among all attaching parties; and

(D) A standardized process for handling code violations, delinquent transfers and unreported attachments.

Additional areas, in the discretion of the working group may be addressed and resolved.

(3) Until, in the discretion of the speakers of the house of representatives and the senate the working group has met the requirements of this subsection (e) at which time the working group shall cease to exist, the working group shall file an annual report with the speakers and with the house commerce committee and the senate commerce, labor and agriculture committee, together with any proposed legislative changes.

SECTION 2. This act shall take effect July 1, 2009, the public welfare requiring it.